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March 14, 1983

Mr. Gary L. Fowler, Financial Agent
Office of Institutional Collections
New Hampshire Hospital
105 Pleasant Street
Concord, New Hampshire 03301

Dear Mr. Fowler:

This is a response to your request by memorandum dated January 12, 1983 for an answer to the following question:

Is the school district where the parents or legal guardian of a patient or resident of Laconia State School or New Hampshire Hospital reside liable for the educational expenses incurred by such patient or resident if he is receiving institutional educational care as a result of proceedings held pursuant to RSA 169-B, 169-C or 169-D?

With respect to educational expenses generally, the answer to your question is that the school district where the child's parents or legal guardians reside is liable for such educational expenses. See RSA 126-A:49. However, the issue is more complicated if the child is determined to be in need of special education under RSA 186-C. We do not answer your question as to the allocation of costs of a placement ordered by the court under RSA 169-B, 169-C or 169-D for an educationally handicapped child under RSA 186-C.

RSA 126-A:49 provides:



"Educational expenses of any resident or patient, who is capable of being benefited by instruction and who is between 6 and 21 years of age, as required under statute and incurred in the institutions named in or at the direction of the commissioner of health and welfare, in any public or private institution or elsewhere, shall be recovered from the school district in which the patient's or resident's parents or legal guardian reside on the January first preceding the recovery up to the state average elementary cost per pupil, as determined by the state board of education for the preceding school year."

Therefore, the school district in which the parents reside would clearly be liable for educational expenses unless RSA 169-B, 169-C or 169-D provide otherwise.

The liability for the expense of evaluating, treating, counselling or rehabilitating a child placed in a state institution pursuant to RSA 169-B, 169-C or 169-D falls upon the town in which the minor resides at the time the petition is filed, or if the residence cannot be determined the town in which the child is taken into custody. See RSA 169-B:40, I; RSA 169-C:27, I; RSA 169-D:29, I; and In Re Ronald R., 122 N.H. ____ (December 29, 1982). The liability under each of the chapters must be established by an order of the court pursuant to the provisions of the particular chapter.

Neither the purpose clauses nor the statutes governing disposition that may be ordered by the court pursuant to RSA 169-B, 169-C or 169-D specifically mention education as part of the purpose for or result of the proceedings required under each of those chapters. The liability for expenses established pursuant to any of those chapters must be limited to the evaluation, treatment, counselling or rehabilitation described in the particular chapter. Liability for educational expenses for any patient or resident who initially came to the state institution pursuant to an RSA 169-B, 169-C or 169-D proceeding is therefore governed by RSA 126-A:49.

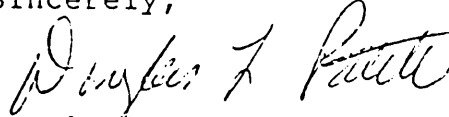
The portion of the bill which relates specifically to educational expenses that are not part of the evaluation, treatment, counselling or rehabilitation of the patient would therefore be billed to the school district, while the other expenses incurred as a result of an order under RSA 169-B, 169-C or 169-D, would be billed to the appropriate town named in the court order.

OFFICE OF THE ATTORNEY GENERAL

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I trust this has been responsive to your question. Feel free to contact me if you have any further questions.

Sincerely,



Douglas L. Patch
Assistant Attorney General
Division of Legal Counsel

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